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HOUSE OF REPRESENTATIVES  
SIXTY-FIRST CONGRESS

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ADDITIONAL JUDGE  
EASTERN DISTRICT OF NEW YORK

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HEARING

BEFORE

COMMITTEE ON THE JUDICIARY

ON

H. R. 20148

APRIL 26, 1910

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## ADDITIONAL JUDGE, EASTERN DISTRICT OF NEW YORK.

COMMITTEE ON THE JUDICIARY,  
SUBCOMMITTEE No. 2,  
*Tuesday, April 26, 1910.*

The subcommittee met at 10.45 o'clock a. m., Hon. John A. Sterling (chairman) presiding.

Present, the Chairman, Mr. Goebel, Mr. Henry, and Mr. Webb.

### STATEMENT OF HON. WILLIAM M. CALDER, A REPRESENTATIVE FROM THE STATE OF NEW YORK.

Mr. CALDER. Mr. Chairman, this is a bill to create an additional judge in the eastern district of New York. The eastern district includes all of Long Island and Staten Island, and has a population of over 2,000,000 people. We now have one district judge. You have filed with you reports of the business transacted in that court and a recommendation from Judge Lacomb, the circuit judge—a Democratic judge, by the way—and also recommendations from the district attorney and the clerk of the court, as well as letters, showing the necessity for this additional judge. I have here the indorsement of the proposition by the bar association of the district, which contains all the leading lawyers of the district, commending the bill very highly. I would also like to file with the hearing editorials from our two leading newspapers, one a Democratic newspaper and the other a Republican newspaper.

The CHAIRMAN. Just hand them to the reporter and he will put them in the hearings.

Mr. CALDER. Those editorials show the necessity for the court. Mr. Kiendl, of Brooklyn, who practices largely in the court, has come here to-day to testify as to the necessity of the additional judge. I am sure after we are through the committee will believe that the bill ought to pass.

### STATEMENT OF ADOLPH KIENDL, ESQ., OF 2590 ATLANTIC AVENUE, BOROUGH OF BROOKLYN, NEW YORK CITY, N. Y.

Mr. KIENDL. Mr. Chairman and gentlemen of the committee, as a practicing attorney in the eastern district for many years, at least thirty years, I have had occasion to practice a great deal in the United States district court, in bankruptcy matters, in the circuit court, and in the trial of cases at common law, and in criminal cases. I am a member of the bar association of Brooklyn, and that association indorses the bill now before your committee and asks that it be passed; I know the association is enthusiastic over this measure.

There ought to be an additional judge for this district, and in order to properly understand the matter I will present certain facts.

You gentlemen, of course, being lawyers, as I understand, know that Brooklyn is now so closely connected with New York that a man having an office in Brooklyn, and having a case in Brooklyn in this eastern district, or with an office in Brooklyn and having a motion to make in the southern district, can reach the court-house in Brooklyn or the court-house in New York in exactly the same time; in other words, he can take the subway and arrive in New York in seven minutes, or it will take him about seven minutes to walk from his Brooklyn office to the court-house in Brooklyn; so that the court-houses of both these districts, the southern and the eastern, are very closely connected.

The CHAIRMAN. Will you describe, Mr. Kiendl, just what territory the district covers—what cities?

Mr. KIENDL. Yes, sir; I will do so. The territory covered by the eastern district, in the first place, has a population now of 2,000,000 people. We have a water front of miles upon miles, circling the whole of Long Island, from the New York City end of it clear around to Montauk Point, Riverhead, Greenport, and then back again around the Sound side. So that from an admiralty point of view we have an extensive water front, ocean and sound, over which the eastern district has concurrent jurisdiction with the southern district of New York. The eastern district has exclusive jurisdiction over Long Island and Richmond County (ocean and bays), except New York Bay, over which the eastern and southern districts have concurrent jurisdiction. Now, when the court was established, twenty-five or thirty years ago—

The CHAIRMAN. That is, they have concurrent jurisdiction in admiralty suits?

Mr. KIENDL. Yes, sir; they have concurrent jurisdiction on the New York Bay, and that takes in all the harbor of New York City; so the eastern district has jurisdiction of all those cases. They can be brought in that district, providing there is proper accommodation to try the cases there. Now, then, the population away back at the time this court was created was about 400,000 people; in other words, we have increased in population to 1,500,000 since that time.

The CHAIRMAN. Since when?

Mr. KIENDL. Since 1866. But, of course, nothing has been done in the line of increasing the court judges in that district (eastern) at all; we have no circuit judge in that district at all. Judge Lacombe, I believe, is the nearest one to us, and he resides, I think, near Hudson, N. Y., 125 miles away, and we therefore have no assistance at all in the eastern district in the line of a circuit judge.

The CHAIRMAN. You have circuit judges in the southern district?

Mr. KIENDL. But the most they do, Mr. Chairman, is to sign an order occasionally, when a judge can not be found in Brooklyn. Now, as a matter of fact, during the last year we have had a judge from the southern district for only three or four days in the entire year; a judge from the southern district to come over to Brooklyn to hold district court for motions, and for motions only, and he would stay there only long enough to dispose of that business, which would sometimes take a very short time. But I believe this did not happen more than four times during the entire year, and that happened to be during the time that Judge Chatfield was away on his vacation. That was the only time we had anyone from the southern

district in the eastern district to hold court at all, and was only for the purpose of hearing motions. I want to say, in modification of the foregoing, that orders were signed in New York during the time that Judge Chatfield was away. For instance, a restraining order, an order to show cause, an order appointing a receiver, or something of that kind, would be signed by a judge in the southern district, but we from the eastern district had to go there to have it done.

But I would not say anything about the inconvenience, because there is really very little inconvenience in crossing the river, because, as stated before, it is a short distance; nevertheless, the matter had to be carried from Brooklyn to New York. Then, in order to get an order, where an examination of the papers was involved, the judge was compelled to spend considerable time. That was only during the time that Judge Chatfield was away on his vacation. But I want to say that we have had no judge from the other courts come to Brooklyn at all except on the three or four days mentioned.

Mr. HENRY. How many district judges have you in the State of New York?

Mr. KIENDL. I think there are now about eight.

Mr. HENRY. I mean federal district court judges?

Mr. KIENDL. Perhaps Congressman Law could tell you.

Mr. LAW. I can not tell offhand.

The CHAIRMAN. Four in the southern district.

Mr. KIENDL. One in the eastern and one in the northern.

Mr. HENRY. Do your circuit judges do any appeal business?

Mr. KIENDL. I should say this, Mr. Henry, that I think the day has now come when it will be absolutely necessary for the circuit court judges to do no other work except to hear appeals. I know the calendar is always pretty well crowded, and it takes the entire time of the court to listen to the appeals, without regard to the time that they must have for making their decisions. They have a very good rule, and one upon which they insist, that before the next term is called they have every case on their calendar disposed of. This is an admirable rule, I think, because it cleans up the court's work for each current term. But I believe the day has been reached when the circuit court judges can do no other business except to take care of their circuit courts.

Mr. HENRY. Is there not some way by which a district judge from another part of the State could be sent to hold a few terms of court?

Mr. KIENDL. That would not relieve matters entirely; I think I can show you this very clearly, even if that were done.

Mr. WEBB. Let me suggest that that ought to be done, because the northern district judge does no work at all. He terminated eight cases last year in which the United States was a party and only 28 criminal prosecutions and no admiralty cases whatever, while your district judge terminated 69 cases in which the United States was a party, 130 criminal cases, and 350 admiralty cases. That northern district judge should be assigned to work in your district.

Mr. KIENDL. The northern district judge and another judge are assigned to the southern district to do the work that is being done there now, but, notwithstanding, they can not dispose of their business.

The southern district is not meeting its work and the eastern district is very much behind. I do not see that there is any other way than to have an additional judge, and if you will just be a little patient

with me I will show you the conditions that prevail. Now, all of this business, caused by the increase in population, has to be taken care of. Judge Chatfield alone is taking care of the criminal calendar, the common-law calendar, the equity calendar, the admiralty calendar, the bankruptcy calendar, naturalizations, motions, and *ex parte* work. Now, the criminal cases alone are many. In such a case, if a judge came to the eastern district from another district it would be impossible to tell how long he would have to hold court. Sometimes it takes two weeks, sometimes three, and sometimes an entire term, to close up the criminal calendar.

And as to the common-law side of the court, which is all jury work, the calendar stands somewhat like this: During 1907—as far back as that—there were 55 cases tried.

The CHAIRMAN. What year is that?

Mr. KIENDL. 1907. Fifty-five of those cases were actually tried; 99 cases on that calendar were dismissed by reason of failure of proof or by reason of failure to make out a proper case. These were partially tried and disposed of in that way. There were 307 orders signed; there were 46 motions argued, and 130 arraignments and sentences during that time. Besides, there was the petit-jury work and the grand-jury work. All of this made 315 days of actual work for the judge. Now, then, if you add to that the 52 Sundays in the year, without regard to any question of vacation time, you have 367 days' work that will be required of a judge to do the circuit-court work alone, without regard to the other work that I will point out in a minute. It will take all of that time to do the work just outlined under the present conditions of that calendar.

Now, we have a large number of accident cases, and you gentlemen know that accident suits can not very well be tried in less than a day or two days' time. It generally takes, I think, two and three days; but I am told by the clerk that the average is one day and a half. Now, the criminal cases are increasing all the time. You must bear in mind that we have a navy-yard in Brooklyn, and we have a great many larceny cases. I remember at the last term of the court there were about 10 or 15 men tried for petit larceny. We also have cases from Fort Hamilton and Fort Wadsworth, and many other cases in which the United States is interested, such as violations, for instance, of the customs laws, etc. I know of a large number of cases of that kind which we have had recently, and also violations of other kinds, including cases of forfeiture by reason of illegal dealing in the liquor traffic. And all of these cases are before this branch of the court. I am now talking only about the circuit court.

We have, in addition to that, the equity side. The equity side of the court to-day takes up a great deal of time. I can remember one case that was being tried while I was waiting for some case to be reached in that branch of the court, and they were over three weeks with that case, and then it took another three or four weeks to work up the briefs that were submitted on the case.

Now, those are little instances of cases that come before that court. I know these facts, because I appear before that court almost every day with some sort of a motion or paper. And I know that one judge can be occupied actually and constantly in doing the work of the circuit court alone.

Now we come to the bankruptcy side of the court, and on that perhaps it will be interesting to spend a few minutes. There were 3,755 cases in bankruptcy in the eastern district.

Mr. WEBB. What year was that?

Mr. KIENDL. That runs up to 1909.

The CHAIRMAN. July 1, 1909.

Mr. WEBB. Are those figures from the records of your court?

Mr. KIENDL. I received these from the clerk of the court.

Mr. WEBB. You mean during one year you have 3,000 bankruptcy cases?

Mr. KIENDL. I want to be very accurate about this and absolutely right. There were, altogether, in that court 3,755 cases; there are pending in that court to-day 875 cases. That is the condition of the bankruptcy calendar to-day.

The CHAIRMAN. You are speaking of the district court alone, or the circuit court and the district court?

Mr. KIENDL. This has reference to the bankruptcy cases, and only the district court.

The CHAIRMAN. You are only speaking of bankruptcy cases?

Mr. KIENDL. Yes, sir; entirely. So you can see we have 875 cases now pending. Those cases, of course, bring up a great many questions in the nature of motions, etc. Motions are made to discharge, and you gentlemen well know it takes sometimes a half day to argue on a question of the report of a referee as to whether a bankrupt should be discharged or not, whether he has carried on business in a fraudulent way, whether he has kept fraudulent books, and whether or not he has disposed of some of his property in a fraudulent manner. I know of my own knowledge that I have taken, myself, an hour or so to argue my side of a case. Therefore the judge must hear all of these different motions. Motions for the appointment of receivers and motions for injunctions of one kind and another are heard in that branch of the court. So the work of that branch of the court to-day is very, very large, and naturally would be, with a population of 2,000,000 people. Of course a great many people who do business in New York live in Brooklyn and, of course, the courts have coordinate jurisdiction. A petition may be filed in the district where a man does his business or where he resides.

Now, then, in addition to that, in the district court we have violations of one kind and another; revenue cases, and cases of that character. There are now in that branch of the court 24 of these cases pending and 6 new cases that have been added to the calendar, all of them government cases.

Now, then, we have another branch of it which is very important, and I think it is worth your consideration, and that is the naturalization court. The naturalization law has been administered by the United States branch of the court in a manner that is certainly commendable, and it is very carefully administered. Judge Chatfield is certainly to be commended for the manner in which he conducts these proceedings, for they are conducted very carefully.

The CHAIRMAN. How long has Judge Chatfield been on the bench?

Mr. KIENDL. A little over three years.

The CHAIRMAN. Who was his predecessor?

Mr. KIENDL. Judge Thomas; he is now a supreme court judge.

The CHAIRMAN. Is Judge Chatfield disposing of business as rapidly as Judge Thomas did?

Mr. KIENDL. On some things I should say yes and on others perhaps not. Judge Chatfield is an able and experienced lawyer and is rather a young man. I will say, in my opinion, on some things Judge Chatfield is a little more expeditious in disposing of them and in others more deliberate. On a fine question of law, I will admit, Judge Chatfield is perhaps somewhat slower than Judge Thomas was, but I do believe that he is a very able judge and disposes of his cases in a very able and careful manner, and is a most conscientious judge.

The CHAIRMAN. Has the docket gotten behind more rapidly since he was judge than before, and if so, what is the cause therefor—is it due to the increase of business?

Mr. KIENDL. Due to the increase of business; the business is increasing in that court every day. I think Judge Thomas would admit this to be a fact and you will find it to be so if you will refer to the returns of the clerk of the court. The clerk has demonstrated by the records that the court is behind in the neighborhood of 80 cases on the criminal side of the court, which are to be actual trials, where juries must be impaneled, and there are also a great many cases on the common-law side of the court. There are also a large number of equity cases; I have two equity cases myself that I am very anxious to reach, but I have not been able to reach them by reason of the condition of the calendar. And this is so in regard to other matters in the court. Certainly, the business is increasing to such an extent that the judge can not do the work, although he is trying hard to do it. I want to say this for him, although he would probably not be pleased if I said it, but I know as a matter of fact that he goes to the court-house at 9 o'clock in the morning, and he stays there every day until 6 o'clock at night, and his stenographer told me that he comes back there at 8 o'clock and stays until 11 or 12 o'clock at night.

Now, I do not think that is right. I do not think a judge ought to be made to labor thus in order to keep up work which is increasing so largely by reason of the increased population which, as I said, was 440,000 thirty-one years ago, the population now being about 2,000,000. There has consequently been such an increase in the business of the court that I think it is time that something were done to relieve conditions.

Now, I was going to speak about the naturalization work. There are pending to-day in this court 639 cases. These cases could not be disposed of by reason of the fact that the judge could not give them time. He is trying to divide up his time so that he can try his cases at common law and criminal law during parts of the jury term, and do this other work in between. He assigns one day a week for that purpose. He tries to hear motions in the fore part of the day, and during the other portion of the day he works on these matters until they are finished, as far as it is possible to finish them. Now, to indicate the increase in business, I will say that the clerk's fees in the naturalization bureau in one year, this last year, amounted to \$8,500, fees coming from that source alone.

It does seem to me, with all these facts before you gentlemen, there ought to be no question about the necessity for an additional judge in the eastern district of New York. I do not think it is fair to

Judge Chatfield, and I certainly do not think it is fair to the litigants in that district, if this bill is not made a law.

Now, as to the bankruptcy end, I was asked about the increase in cases. There are 250 bankruptcy petitions, voluntary and involuntary, filed every year. You gentlemen all know how much time is consumed in doing that work.

Mr. HENRY. If we should repeal the bankruptcy law, that would relieve your court of a great deal of business?

Mr. KIENDL. Of course it would relieve the bankruptcy part of it.

Mr. HENRY. You are getting so prosperous now that you ought not to need any bankruptcy court.

Mr. KIENDL. It seems to be the custom of Congress every twenty or thirty years to do away with it; then you give it back to us again.

Mr. HENRY. They do it oftener than that; they usually do it after about five years.

Mr. KIENDL. I am a little sorry they do it so often, because I think it is a mistake. Unfortunately for us, in our State they have an assignment law which comes in nicely for certain unprincipled fellows to give preferences, and it works very injuriously. With a part of our population, when it comes to a time to make a preference, the fathers-in-law, the mothers-in-law, and the sisters-in-law are all taken care of, but the other creditors are forgotten. I am awfully sorry to think that such a thing may be done. Ordinarily, with our good American people, we do not have such trouble, but there are some of those among us who are constantly looking for an advantage.

Now, I want to call your attention to one more thing, in which Congressman Law was very much interested. I think it is going to be about the most important thing that will take place in New York State. Congress has passed what is known as the Jamaica Bay bill, which means the expenditure, I believe, of about \$5,000,000.

Mr. LAW. An expenditure of seven and a half millions by the Government and by the State of about ten millions within the next ten years.

Mr. KIENDL. If this bill becomes a working act it will greatly increase admiralty business in our district and matters that we will have, and this will come about very soon, I believe, as they are now about ready to prepare the plans for said work. This will make miles of wharves and docks.

Mr. LAW. An appropriation is carried in the river and harbor bill this year for the commencement of the work.

Mr. KIENDL. That demonstrates that Brooklyn is going to be one of the largest docking centers in the world, for we have miles of water front which can be utilized. All of this, as said before, will increase the admiralty work of the court very, very largely over and above the considerable work we already have.

Now, with all those things staring us in the face it does seem to me that there ought to be no hesitation in granting an extra judge for the eastern district, with the increase of business there to-day, with the calendars in every branch of it behind alike in the circuit court, actions criminal, in equity, and at common law, and in the district court, bankruptcy, and naturalization matters.

Mr. HENRY. You were allowed two additional judges for New York two or three years ago, were you not?

Mr. KIENDL. They were not in New York.

Mr. HENRY. I understand that. However, I think when Mr. Alexander reported the bill he stated, if I am not mistaken, that would relieve matters for some time and you would not need additional judges. Were not two judges so granted?

Mr. FITZGERALD. In the southern district.

Mr. FOELKER. One in the southern district.

Mr. WEBB. How many have you now in the southern district?

Mr. FOELKER. I believe four altogether.

Mr. HENRY. I know I voted for two judges within the last two or three years.

Mr. CALDER. I think we were granted one circuit and one district judge within the last four years.

Mr. HENRY. I am not taking any position on this bill, but would just like to know about that, and to know whether there is any prospect of taking some of those judges from another part of the State and sending them over there.

Mr. FITZGERALD. At the present time the judge in the eastern district gives some of his time in the southern district.

The CHAIRMAN. How long ago was that, Mr. Fitzgerald? Did Judge Thomas do that?

Mr. KIENDL. Judge Thomas did it at one time; yes, sir.

The CHAIRMAN. About how long ago?

Mr. CALDER. That ended about two years ago. The present judge went over there for a while, but about two years ago that stopped.

The CHAIRMAN. How could he do that when his own calendar was so far behind?

Mr. KIENDL. He only helped out, to do something that had to be done; cases were assigned and set down and they had to be tried.

Mr. LAW. My recollection of that is it was done before there was an increase in the number of judges in the southern district, so that at the time, while the eastern district would have been in bad shape, the southern district was in even worse shape. Since the increase of judges in the southern district the judge in the eastern district has not gone over there to hold criminal terms.

Mr. KIENDL. To-day the district judge from the northern district is brought down and tries cases in the southern district, but even so the southern district court can not keep up with the demands made upon it.

Mr. WEBB. What was that statement?

Mr. KIENDL. Even at this time, with two additional judges, the judge from the northern district is assigned to the southern district to help out.

Mr. HENRY. What is the name of that judge?

Mr. FOELKER. Mr. Ray.

The CHAIRMAN. Have you any customs fraud cases in your district?

Mr. KIENDL. There are some; yes, sir.

The CHAIRMAN. The department claims they can not get judges in the southern district to try those cases now.

Mr. WEBB. Does Judge Chatfield ever sit in the circuit court of appeals?

Mr. KIENDL. Occasionally he may; I do not know that he has. I really do not think he has.

Mr. FITZGERALD. I do not believe he ever does.

Mr. KIENDL. He may, on occasion, where they want to try some cases and need him to help out, but I have never heard of it.

The CHAIRMAN. This district includes Long Island and Staten Island?

Mr. KIENDL. Yes, sir; all of Long Island and Staten Island.

The CHAIRMAN. Any other territory?

Mr. KIENDL. That is all it takes in.

The CHAIRMAN. This district includes the entire city of Brooklyn?

Mr. KIENDL. Yes.

The CHAIRMAN. Any other cities?

Mr. KIENDL. It takes in Greenport and Riverhead, Long Island City, and Jamaica.

The CHAIRMAN. Is there any country territory in the district at all?

Mr. KIENDL. Yes; some country territory. As a matter of fact, a very large territory. Long Island is about 130 miles in length.

Mr. FITZGERALD. Long Island is 110 miles long.

Mr. CALDER. There are nine Members of Congress from that territory.

The CHAIRMAN. There is a bill pending before this subcommittee providing that the Chief Justice may assign judges from other circuits. Now, the circuit judges in the circuit may assign judges from one district to another in the circuit, but this bill, introduced by Mr. Parsons, provides that the Chief Justice may, upon request of the judge of any circuit court, assign judges from one circuit to another. Now, there are circuits in the country—like Vermont and New Hampshire—where the district judges have practically nothing to do; do not you think the situation could be relieved in the eastern district by passing that bill so the Chief Justice could assign judges from other circuits to your circuit?

Mr. KIENDL. It would only be a temporary relief. We absolutely need another judge all of the time, Mr. Chairman; there is no doubt about it. I have figured it out carefully; I have gone over all the figures, and all the cases, and am convinced that one additional judge would have every day fully employed in discharging the honest work of the court, vacation time excepted.

Mr. HENRY. Have you submitted this to the Attorney-General?

Mr. CALDER. You have a recommendation here from him.

The CHAIRMAN. I think we have a letter from the Attorney-General approving this bill. [After making a search.] I think we have no letter from the Attorney-General, Mr. Calder.

Mr. CALDER. I saw it in the papers the other day, in your docket.

The CHAIRMAN. We have several letters here from judges, and have a letter from the Attorney-General, or, at least, from the Acting Attorney-General. This is what the Acting Attorney-General says, after enumerating the business, "These figures do not show a present urgent necessity for the passage of said bill; however, it is doubtless true the business of said district is increasing from year to year and is likely to continue to do so. I therefore recommend that the relief be provided." That is the concluding paragraph in his letter.

Mr. KIENDL. I am satisfied, Mr. Chairman, you would not get the relief that is really needed there unless a new judge is appointed for the district. The sending of another judge for a time would not accomplish it, because he should be there all the year through, to actually sit in the trial of cases and do his part of the ex parte work

and to take care of the motions that may come before the branch of the court he may be holding. It is the only expeditious way of doing business. I do not believe that we of the eastern district could get any real relief in any other way, and the district therefore demands serious attention at your hands. We have 2,000,000 population to-day, which is constantly increasing, and this Jamaica Bay proposition will certainly bring a very large amount of business. The government interests and everything else will be affected by it, and it certainly does seem to me that it would be a serious mistake not to grant this additional judge now, where it is obvious that an additional judge is so urgently needed. Everyone who is really acquainted with affairs in the eastern district feels that it should be done. It would be very unwise to have some one come irregularly from a neighboring court and attempt to do the work that ought to be done by a regular resident judge. And I think something is due to Judge Chatfield; that is, I think he ought to be relieved. I know how he feels. He wants to do the work and is laboring hard to get the work out, but he simply can not do all of it.

Mr. HENRY. How old a man is he?

Mr. KIENDL. About 40.

Mr. HENRY. There is a great deal of good work in him yet.

Mr. KIENDL. That is so; and he is working hard. We know how hard he is working there every day.

Mr. HENRY. I wish you would put into the report here the number of judges, federal district judges, you have in the State of New York, then the number of cases pending in each district, the number disposed of, and the number of days each one of those judges held court during the last two years. I think you can get all of that out of the attorney-general's report, or practically all of it.

Mr. FITZGERALD. There are 7 district judges in New York, 4 in the southern district, 1 in the western district, 1 in the northern district, and 1 in the eastern district. Permit me to give you one illustration: In our supreme court in Manhattan, or New York County, which is the first department, there are 30 supreme court justices; in addition to that they have the city court, which has quite extensive jurisdiction and a number of judges. I can put the exact number in the record.

Mr. HENRY. I wish you would do that.

Mr. FITZGERALD. Then they have the criminal court—

Mr. HENRY. Are those all trial courts that you are speaking of?

Mr. FITZGERALD. Well, trial courts and appellate courts.

Mr. HENRY. They are not appellate courts?

Mr. FITZGERALD. Of those 30 justices, 7 of them are assigned for appellate work; in the second department which is identical with the eastern district of New York, there are 17 supreme court justices, and of those 17 men only 3 are assigned to the appellate work. You can judge from that the character of the work and the amount of the business. In the eastern district we have 1 district judge, while in New York country there are 4 district judges; and it is entirely out of proportion to the amount of work.

Mr. WEBB. Four in the southern district and 1 each in the other three?

Mr. FITZGERALD. Yes. One sits at Buffalo, which is in the western district, and that court has all the lake traffic business, growing out of

those matters up there. Judge Ray sits in the southern district quite frequently; the other man is occupied in his own district, and Judge Ray has the northern district and has some time at his disposal.

Mr. HENRY. I would like you to make that comparison.

Mr. WEBB. This circuit has four circuit judges?

Mr. FITZGERALD. I do not know about that.

Mr. WEBB. Yes; four circuit judges.

Mr. HENRY. They do nothing but appellate business now?

Mr. WEBB. But they were not in session more than one hundred days during the last session.

Mr. KIENDL. It takes them some time to write up the appeals.

Mr. HENRY. Do they use any of these district judges in the appellate court?

Mr. FITZGERALD. I do not know.

Mr. HENRY. They used to do it a great deal, but they have almost abandoned that plan.

Mr. FITZGERALD. I do not know; I used to be more familiar with it than I am now.

Mr. KIENDL. I know Judge Chatfield has done this to expedite business; he would have an attorney summing up in one branch of the court before a jury and he would leave the bench and go to the other branch of the court and charge a jury. I have seen him do that.

Mr. HENRY. Did he sit with the circuit court of appeals during any of the last year?

Mr. KIENDL. I am not positive about that.

Mr. HENRY. I wish you would find out, and if he did, just how many days he sat.

Mr. KIENDL. I will be glad to ascertain those facts for you.

Mr. LAW. It might be interesting to say that there are 17 supreme court judges—that is, state judges—in the territory covered by the eastern district, and that includes 8 new judges who were created by state constitutional amendments in 1906, I believe; so that by the creation of the 8 new judges the increase in the volume of business was recognized in the state courts, but during that period of time no such recognition has been given as to the United States courts, and in addition to the 17 supreme-court judges there are 2 county judges who have jurisdiction up to \$2,000 and 8 municipal-court judges who have jurisdiction up to \$500.

Mr. FITZGERALD. In connection with the naturalization business Mr. Malloy, who is here present, is the county clerk of Kings County. Mr. Kiendl stated that the receipts during the year in the district court were \$8,500; Mr. Malloy's fees in the state court amount to over \$20,000.

Mr. MALLOY. At the present rate of business we will do about \$20,000 a year, and that has been taken in within the last year. The Government gets out of that some \$12,000.

#### STATEMENT OF HON. OTTO G. FOELKER, A REPRESENTATIVE FROM THE STATE OF NEW YORK.

Mr. FOELKER. Mr. Chairman, permit me to go on record as being heartily in favor of this bill. The report of the Attorney-General shows that the amount of work that is being done in the eastern district justifies the reporting of this bill and demands its passage.

Now, as to Judge Chatfield's ability. Prior to his appointment he was assistant United States district attorney in the eastern district, and hence was familiar with the criminal part, at least, of that district. I, too, have observed Judge Chatfield where, as my friend has stated, while the lawyers were summing up in one case he would step into an adjoining room and impanel a jury in another. This simply goes to show that he is doing his utmost at great sacrifice to himself to relieve conditions there. He does work and works hard and is always at work. Often after a case has been tried and submitted briefs are handed up, which must be carefully examined and the authorities considered, so that his decision shall be in accordance with the facts and the law. With a judge as busy as is Judge Chatfield, all this must be done before and after long and tedious court hours. This the committee well knows.

As has been well said by Mr. Fitzgerald, the naturalization work in this court takes up a great deal of time. We have, too, a very efficient district attorney who watches each case and examines each applicant in the presence of the judge; all that takes time. With all this there are more than 13,000 cases of different kinds pending in the eastern district, and it is beyond human endurance to keep up with the growing calendars. That alone ought to justify a favorable report.

Mr. HENRY. Your idea is that you need another judge to be present all the time on account of extraordinary matters that come up?

Mr. FOELKER. Absolutely; there is no question about that, Mr. Henry. If Judge Chatfield should suddenly become ill, the district would be without a judge, unless one should be assigned from another district, who must necessarily be unfamiliar with the routine and conditions. But you have already heard statements to the effect that other districts are constantly working their judges to their utmost, and few or none can be spared. We can therefore hardly expect to get relief from those districts. There is with us quite enough work for two efficient conscientious judges.

Mr. WEBB. Explain to me what the district judge does in a naturalization case, Mr. Foelker.

Mr. FOELKER. He is on the bench and listens to the testimony of the applicant and his witnesses so as to ascertain whether he is qualified for the high privilege of citizenship and that no fraud is committed.

Mr. FITZGERALD. Under the new naturalization law he must personally conduct the proceedings.

Mr. HENRY. He must take the evidence?

Mr. FITZGERALD. Yes. In that court, Mr. Webb, the condition is such that the judge has fixed the number of cases he will hear and he will not hear any more cases; and he has to turn away other classes of work on that account.

Mr. KIENDL. And he must sign a lot of documents in connection with naturalization work.

Mr. LAW. Besides that, the judge personally examines applicants and examines witnesses.

Mr. WEBB. Have you a record there as to how many naturalization papers he passed upon personally?

Mr. CALDER. That is all in the record referred to the committee.

Mr. KIENDL. I have the number of naturalization cases that are undisposed of, but I have not the total number of all the naturalization applications that were handed in, but I can supply that if you wish it.

Mr. FOELKER. Will you hear from Mr. Malloy for one moment?

**STATEMENT OF MR. HENRY MALLOY, COUNTY CLERK OF KINGS COUNTY, BROOKLYN, N. Y.**

Mr. MALLOY. I did not intend to make any remarks on this bill, but Congressman Fitzgerald and Congressman Calder met me on the car last night and brought me here. A couple of the questions that have come up here I am rather familiar with, particularly the question of naturalization and what the judges have to do with those matters. Our court, of which I am the clerk, is the supreme court, and under your recent naturalization law you gave to that court jurisdiction to naturalize, and on the final application for the papers the matter comes before the judge and the case is put on the calendar at the regular term for that purpose; our experience is that we can only dispose of between 40 and 50 a day, and the judge very often takes a case into his own hands and examines the witnesses. On one of the recent days, out of a calendar of 50, only 23 were favorably acted upon, so you can see with what vigor the examination is conducted. I understand the same practice is in vogue by Judge Chatfield and other district judges. It is a matter of common knowledge that the business in this court is very much congested. Congressman Fitzgerald has told you about the increase in our state courts, and we now have a bill before the state legislature increasing our county judges from two to four. However, even with the increased number of these state judges, there still continues to be a congestion in these courts; the volume of business has increased very, very largely. Last year there was filed in my office over 18,000 separate proceedings, so you can have some idea of the volume of business that is being conducted in this eastern district, and the supreme court has the main part of it.

I think Mr. Kiendl has voiced the united sentiment of the bar of that district in making a demand for an additional justice, and I hope you will look at it in that way.

Mr. WEBB. How many people were naturalized in this court last year?

Mr. MALLOY. I have not the statistics. My incumbency only dates from the first of the year. The return I made to the department in the quarter ending March 31 was \$4,000; that represents fees sent to the Department of Commerce and Labor.

Mr. WEBB. How many cases would that indicate?

Mr. MALLOY. Well, I could not tell you that, because for the first paper—that is, the declaration—we receive a fee of \$1, and when the petitions are filed we receive a fee of \$4, so those two fees make up the total amount. I have not the figures here and can not tell you just what they are. But we are putting on the calendar every week for final disposition and the granting of papers some 50 or 60 cases, but we are receiving more than that number. I would say that the reason why the state court has been crowded with this business is because of the congestion in the federal court. We are now doing

in our state court more business than in either of the federal courts or any other state court within that metropolitan district, largely because we have assumed the jurisdiction of it and have increased our facilities.

Mr. WEBB. I was asking you for figures in the district court.

Mr. MALLOY. I couldn't tell you that; I have not those figures.

Mr. KIENDL. I will furnish them.

Mr. CALDER. I will be glad to furnish any information the committee may want.

The CHAIRMAN. I think Mr. Kiendl will send the statistics that Mr. Henry called for and get them in this hearing.

Mr. HENRY. I would like Mr. Fitzgerald to include in that statement all about the state courts, and so forth.

Mr. FITZGERALD. If you wish it it might be of interest to include the volume of business; we could prepare and furnish a statement as to the number of judges in the various courts and a brief statement of the jurisdiction.

Mr. HENRY. I wish you would do that.

Mr. FITZGERALD. It would give some information as to the tremendous volume of business. For instance, I was in Brooklyn yesterday; I inquired about a case which came to issue about two years ago, and they said it might be reached some time in the fall.

The CHAIRMAN. Let me give these figures to the reporter, taken from the report of the Attorney-General: In 1906 the cases commenced were 399, terminated 380, tried 202; 1907, commenced 381, terminated 242, tried 134; 1908, commenced 667, terminated 435, tried 245; 1909, commenced 456, terminated 549, tried 227. This includes all cases except bankruptcy cases. Now, did Judge Chatfield preside in 1907?

Mr. FITZGERALD. Judge Thomas was elected to the supreme court in 1906 and Judge Chatfield was appointed to succeed him; Judge Thomas went to the state court the first of January, 1907, and I think Judge Chatfield immediately qualified.

The CHAIRMAN. Then the last year that Judge Thomas was on the bench he tried 202 cases; Judge Chatfield the first year he was on the bench tried 134, the second year 245, and the third year 227. That of course does not include the bankruptcy cases.

Mr. FITZGERALD. During the first year Judge Chatfield sat for some time in the southern district.

Mr. KIENDL. Yes, that is true, so that would account for the decrease that is shown there.

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BROOKLYN, N. Y., May 3, 1910.

Hon. R. W. PARKER,  
Chairman Judiciary Committee.

DEAR SIR: In accordance with my promise made to your committee at the hearing on Tuesday last on bill H. R. 20148, Sixty-first Congress, second session, I herewith send you list of the judges of the supreme court located in the eastern district of New York, and also the county judges in the same district; also the magistrates and municipal court justices and the justices of the peace within said district, and the salaries paid to the judges, except justices of the peace, which is a fee office, and therefore no salary is fixed.

I also inclose an item taken out of the New York Herald and an item taken out of the Brooklyn Daily Eagle, both of which papers are leading papers in the State of New York, showing the great steamship and docking coastwise shipping that is about

to be moved to the eastern district of New York, which is included in the district in question.

As is stated in the articles in the New York Herald, \$3,000,000 is now being expended under an appropriation by the city of New York, and about \$17,000,000 will be needed for that purpose, as I stated in my argument before your committee.

I also promised to give you the number of naturalizations now before the court unfinished, to wit, 639 cases, and on the average about 30 cases are disposed of each day, but at the present time the court has been unable to give more than one day per week to that work.

There are also now pending in the bankruptcy court 875 cases, and 3,755 cases in which petitions have been filed.

It will be seen by the statements I herewith give you that there are 18 judges of our supreme court within this district, having unlimited civil and criminal jurisdiction, who each receive a salary of \$17,500 a year; 5 county judges, who have civil and criminal jurisdiction, and civil jurisdiction to the extent of \$2,000 and unlimited jurisdiction in real property matters located within the county, and receive a salary of \$10,500.

There are 11 municipal court justices in the Borough of Brooklyn (Kings County), at a salary of \$8,000; 4 in Queens, at a salary of \$7,000; and 2 in Richmond, at a salary of \$7,000.

There are also 10 magistrates in Brooklyn, at a salary of \$6,000; 4 in Queens and 2 in Richmond, at a salary of \$5,000.

It will be seen from this list that these judges, in some cases having both criminal and civil jurisdiction, and in some cases criminal jurisdiction only. They are, however, all discharging their duties in the eastern district of New York, in which there is a population, as I stated, of over 2,000,000 people, and it looks almost a farce to think that one federal judge should be assigned to do all this work in this great cosmopolitan and commercial district.

In addition to the above there are ten towns in Suffolk County and three in Nassau County, each town having 4 justices of the peace, making a total of 44 justices having limited civil and criminal jurisdiction.

There should be no delay in pressing this bill to an immediate passage in justice to Judge Chatfield, who, I know, is very much overworked, and in justice to the litigants in the eastern district.

Yours, very truly,

ADOLPH KIENDL.

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THE JUDICIARY OF THE EASTERN DISTRICT OF THE STATE OF NEW YORK.

*Justices of the supreme court located in this district (having both civil and criminal jurisdiction).*—Hon. Almet F. Jenks, Hon. Edward B. Thomas, Hon. Joseph A. Burr, Hon. William J. Carr, Hon. Garret J. Garretson, Hon. Samuel T. Maddox, Hon. Isaac M. Kapper, Hon. Harrington Putnam, Hon. Josiah T. Marean, Hon. William J. Kelley, Hon. Walter H. Jaycox, Hon. Joseph Aspinall, Hon. Frederick E. Crane, Hon. Abel E. Blackmar, Hon. Luke D. Stapleton, Hon. Townsend Scudder, Hon. Lester W. Clark, Hon. Arthur E. Sutherland (sitting temporarily). Salary, \$17,500.

*County judges (having both civil and criminal jurisdiction).*—Hon. Norman S. Dike, Hon. Lewis L. Fawcett, Kings, \$10,500; Hon. Bert J. Humphrey, Queens, \$6,500; Hon. S. D. Stephens, Richmond; Hon. Edgar Jackson, Nassau; Hon. T. M. Grifling, Suffolk—\$5,000. (Last three also act as surrogates for their respective counties.)

*Surrogates.*—Hon. Herbert T. Ketcham, Kings, \$10,000; Hon. Daniel Noble, Queens, \$5,000.

*Justices of the municipal court of the city of New York (having civil jurisdiction only).*—Hon. Eugene Conran, Hon. George Freifeld, Hon. Philip D. Meagher, Hon. William J. Bogenshutz, Hon. John R. Farrar, Hon. Jacob S. Strahl, Hon. Cornelius Furgueson, Hon. Lucien S. Bayliss, Hon. George Fielder, Hon. Alexander S. Rosenthal, Hon. Edward A. Richards, Borough of Brooklyn, \$8,000; Hon. Thomas C. Kadien, Hon. John M. Cragen, Hon. Alfred Denton, Hon. James F. McLaughlin, Borough of Queens; Hon. Thomas C. Brown, Hon. Arnold J. B. Wedemeyer, Borough of Richmond, \$7,000.

*Justices of special sessions (having special criminal jurisdiction).*—Hon. H. J. Forker, Hon. J. J. McInerney, Hon. John Fleming, Hon. Robert J. Wilkin, Hon. G. J. O'Keefe, Hon. M. M. L. Ryan, \$6,000. (One of these justices also acts as justice of the childrens' court.)

*City magistrates (having criminal jurisdiction only).*—Hon. A. V. B. Voorhees, jr., Hon. E. J. Dooley, Hon. J. G. Tighe, Hon. John Naumer, Hon. E. G. Higgenbotham,

Hon. F. E. O'Reilly, Hon. Moses Harris, Hon. H. P. Nash, Hon. John F. Hylan, Hon. A. H. Geismar, Borough of Brooklyn, \$6,000; Hon. M. J. Smith, Hon. Joseph Fitch, Hon. Maurice Connelly, Hon. E. C. Gilroy, Borough of Queens, \$5,000; Hon. J. B. Handy, Hon. Nat. Marsh, Borough of Richmond, \$5,000.

*Justices of the peace (having both civil and criminal jurisdiction).*—There are 10 towns in Suffolk County and 3 towns in Nassau County, each town having 4 justices of the peace, making 52 in all.

RECAPITULATION.

Eighteen justices of the supreme court within the eastern district of the State of New York, each \$17,500.	\$315,000
Five county judges, total salaries.	42,500
Two surrogates, total salaries.	15,000
Seventeen municipal court justices, total salaries.	130,000
Six justices of special sessions, total salaries.	36,000
Sixteen city magistrates, total salaries.	90,000
Grand total of annual salaries.	628,500

This is exclusive of the salaries and fees of the 42 justices of the peace of the counties of Suffolk and Richmond.

BROOKLYN, N. Y., April 13, 1910.

Hon. R. W. PARKER,

*Chairman Judiciary Committee, House of Representatives,*

*Washington, D. C.*

DEAR SIR: Herewith you will find inclosed communication from the secretary of the Brooklyn Bar Association, relative to the measure providing for an additional judge of the district court for the eastern district of New York.

The proposed bill meets with the hearty approval of our entire bar.

Very respectfully,

DAVID F. MANNING,  
*President Brooklyn Bar Association.*

BROOKLYN BAR ASSOCIATION,  
*Brooklyn, N. Y., April 13, 1910.*

Hon. DAVID F. MANNING,

*350 Fulton Street, Brooklyn, N. Y.*

DEAR MANNING: At a stated meeting of the Brooklyn Bar Association held at the Brooklyn Club (governor's room), corner Clinton and Pierrepont street, Brooklyn, N. Y., on Friday, April 8, 1910, the House of Representatives bill No. 20148, adding a new judge to the district court of the United States for the eastern district of New York, was duly approved by said association and I was directed to inform the proper authority of such approval.

Yours, very truly,

E. L. COLLIER, *Secretary.*

[The Standard Union, Thursday evening, April 21, 1910.]

NEED OF AN ENLARGED COURT.

Congressman Calder's bill for an additional judge of the district court for this district should pass. The interests of this great business and commercial community rightfully require that adequate facilities be provided for determining speedily the causes of which this court has jurisdiction.

The bar and the bench have agreed that proper provision for justice to litigants requires the appointment of an additional judge, who shall reside in the district and who shall possess the same powers, perform the same duties, and receive the same compensation as the present district judge of this eastern district. Mr. Calder's bill to that effect has been indorsed by the Brooklyn Bar Association; by Judge Lacombe, of the circuit court; and by Judge Chatfield, of the district court.

This is not a newly discovered need, but one that has been discussed and generally acknowledged for a long time. As Mr. Taft has said, "The courts exist for the benefit of the people." The demands of the people upon the court have increased, while the provision made by the Government has not been extended. While in the Manhattan district there are now four district judges, in this district, which includes all of Long Island and Staten Island, one judge has to take care of the swarm of naturalization cases which come up every week, of all the admiralty cases, of all the bankruptcy matters, which involve delicate points of law, and which peculiarly require speedy decision if justice is to be done, as well as of the ordinary civil and criminal calendars. At the hearing to be given by the Committee on the Judiciary on Mr. Calder's bill next Tuesday, the facts will be presented; when the committee is made acquainted with the circumstances it will, one may say with the greatest confidence, decide to expedite Mr. Calder's meritorious measure.

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[Brooklyn Daily Eagle, Thursday evening, April 21, 1910.]

FOR AN ADDITIONAL FEDERAL JUDGE.

Representative William M. Calder has introduced in the lower House at Washington a bill which is now in the hands of the Judiciary Committee, authorizing the President to appoint, by and with the advice and consent of the Senate, an additional United States district judge for the eastern district of the State of New York, to have the same duties, powers, and compensation as Judge Thomas I. Chatfield. The bill is approved by the Brooklyn Bar Association, by Judge Chatfield, who will be relieved thereby, and Judge Lacombe of the federal circuit court.

By section 541 of the United States Revised Statutes, the eastern district of New York consists of Richmond, Kings, Queens, and Suffolk counties. As Nassau was formerly a part of Queens, that is included also. Over all the waters of the counties named and those of New York County, the judges of the southern district and the judge of the eastern district have concurrent jurisdiction. The southern district is not separated from the northern district by a naming of counties, except that Albany, Schoharie, and Delaware, and counties north and west of them are in the latter. It follows, of course, that the southern district has much more work than either of the others, but it has not four times as much work as the eastern district; and it has four judges to do what has to be done.

We trust the Brooklyn lawyers will be well represented at the hearing on this bill in Washington next Tuesday. Every such lawyer who practices at all in the federal courts is interested in the move to relieve the existing congestion of business. It ought to be relieved. Mr. Calder's bill asks for this part of the State nothing that is excessive or unreasonable.

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[Brooklyn Daily Eagle, April 27, 1910.]

MORE STEAMSHIP LINES COMING TO BROOKLYN—COMMISSIONER TOMKINS TO CLEAR MANHATTAN DOCKS OF COASTWISE SHIPPING—RAILROADS MAY CHANGE, TOO—A PLAN BY WHICH THE MANHATTAN WATER FRONT WILL BE RESERVED FOR OCEAN STEAMSHIPS.

Dock Commissioner Tomkins's policy is to make the South Brooklyn water front the center of all the coastwise shipping, according to a statement which he made to-day before the sinking-fund commission. It can not be done immediately, but it is the intention of the commissioner, as the leases of the steamship companies expire on the Manhattan piers, to have them come to the Brooklyn side of the harbor for their dockage facilities. These, of course, are the companies engaged in the coastwise trade. The piers on the North River in Manhattan, the commissioner believes, should be reserved for ocean-going vessels entirely.

In anticipation of this policy the commissioner ventured the suggestion that it was only a question of time when the New England and the southern steamship companies, and possibly some of the railroad lines, will eventually move to Brooklyn.

The sinking-fund commission was considering the dispute between the Brunswick Steamship Company and the city over a sublease which the former wishes to let. This company, now in the hands of a receiver, is engaged in the coast trade between New York and southern ports. They hold twenty-year leases on two piers on the



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North River which they wish to sublet to the New England Navigation Company, which runs the Boston boats.

The dock commissioner has refused to allow the lease to the New England Navigation Company, which runs the Boston boats, on the ground that it will violate his new policy of keeping the North River for ocean vessels, sending coast traders to Brooklyn or the East River. He said to Mayor Gaynor and the sinking fund commissioners in defense of his policy:

"These southern boats might just as well go over to the South Brooklyn water front. Their cargoes only have to be shipped over to Brooklyn anyhow, in lighters, and never touch Manhattan. The time is soon coming when all the southern and New England steamers must go to Brooklyn. In fact, it will be a great deal more advantageous for them to do so. They can have better facilities and cheaper rent. I hope and think that some of them will anticipate this moving and go to Brooklyn before they are forced to."

The mayor agreed that Mr. Tomkins's policy was a good one, but said that it could not be settled offhand whether or not the Brunswick Company should forfeit their right to sublet, if they had such a right. The mayor decided that the matter had better lay over for at least another week.

During the controversy Commissioner Tomkins received some pretty hard knocks from Stephen C. Baldwin, counsel for the Brunswick Company. Mr. Baldwin declared that the dock commissioner was evidently working hand and glove with the New England Navigation Company and the Lehigh Valley Railroad Company in what amounted to a virtual conspiracy against the Brunswick Company. He said that while Mr. Tomkins's policy might be a good one, it was not fair to crush one individual concern in carrying it out.

The sinking fund commission decided to hold a public hearing on May 18 at 11 o'clock, at city hall, on the proposed Jamaica Bay improvements as recommended by Commissioner Tomkins in his report made to the commission last week.

[New York Herald, May 2, 1910.]

**TAXPAYER COMPLAINS OF NEW DOCK ORDERS—ASSERTS THAT FORCING NEW ENGLAND COMPANY'S BOATS TO SOUTH BROOKLYN IS UNFAIR.**

To the EDITOR OF THE HERALD:

There appears to be a preconcerted plan on the part of the municipal authorities to do anything and everything to benefit Brooklyn at the expense of Manhattan. The programme for subways is all in favor of Brooklyn. Then, for the Jamaica Bay proposition the board of estimate appropriated \$3,000,000 without even a protest. Now Brooklyn wants the barge canal boats, and, of course, will get them, and now comes the case of the New England Navigation Company, which the dock commissioner is trying to force over to South Brooklyn, and gives notice that all coastwise steamers will have to dock there. The business of this company is largely made up of freight to the dry goods commission houses from the factories of Fall River, New Bedford, Norwich, and Providence; also direct shipments to and from Boston. The proposition, therefore, is nothing less than a vital blow against one of the most important branches of business in Manhattan. \* \* \*